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Attorneys for Plaintiff
KARL FINLEY

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

KARL FINLEY,

Plaintiff,

v.

COUNTY OF MARIN; MARSHA GRANT;
DIANE STOKER; and DOES 1 through 50,
inclusive,

Defendants.

Case No. C07-05922 TEH

**DECLARATION OF SCOTT A. BROWN
IN SUPPORT OF PLAINTIFF'S
APPLICATION FOR ORDER TO SHOW
CAUSE WHY CONTEMPT CITATION
SHOULD NOT ISSUE FOR LINDA
DAUBE'S FAILURE TO COMPLY WITH
DEPOSITION SUBPOENA**

[F.R.C.P. 45]

**Date: August 18, 2008
Time: 10:00 a.m.
Location: Courtroom 12, 19th Floor**

Hon. Thelton E. Henderson

I, Scott A. Brown, declare:

1. I am a partner of the law firm of Kahn Brown & Poore LLP, attorneys for the plaintiff in this action. I have personal knowledge of the matters stated in this declaration and could competently testify to them if called as a witness.

1 2. Attached hereto as Exhibit A is a true and correct copy of a subpoena for
2 deposition and production of documents my office caused to be personally served on Linda
3 Daube on April 29, 2008, for her appearance on May 19. Ms. Daube was served twenty days in
4 advance of her noticed deposition.

5
6 3. Attached hereto as Exhibit B, is a true and correct copy of defendant Marin
7 County's ("county counsel") objections to the subpoena and request for production of documents
8 on behalf of Ms. Daube, served on May 16, 2008. The objections were served more than fourteen
9 days after service of the subpoena.

10
11 4. I wrote county counsel explaining that the objections, including any privileges
12 asserted were untimely and therefore waived. Attached hereto as Exhibit C is a true and correct
13 copy of my correspondence dated June 2, 2008.

14
15 5. Attached hereto as Exhibit D is a true and correct copy of county counsel's
16 correspondence denying that Ms. Daube had been personally served and stating that she would
17 not be appearing for deposition.

18
19 6. On June 9, 2008, I provided county counsel with the proof of service showing Ms.
20 Daube was served on April 29 for a deposition to occur on May 19, attached hereto as Exhibit E.
21 I reiterated that the last day to serve objections to the subpoena was May 13 and requested that
22 county counsel confirm that the objections be withdrawn and Ms. Daube make herself available
23 for deposition on a mutually convenient date. I stressed that Ms. Daube had already received
24 twenty days notice for her deposition, which appeared to be more than reasonable. Further, I
25 noted that I would have extended the time had county counsel brought it to my attention.

1 7. Receiving no response, I telephoned county counsel in an effort at informal
2 resolution of this discovery dispute. County counsel replied that he “had sent another letter.” I
3 had not received such letter but wanted to take the opportunity to resolve this dispute on the
4 telephone without trading more letters back and forth. County counsel stated that he did not
5 believe he have waived any objections based on the “totality of the circumstances”, which he was
6 unable or unwilling to define. Instead, he referred me again to a letter that had not been received.

7
8 8. I explained to county counsel that if Ms. Daube needed more time to appear for
9 deposition and/or to produce responsive documents I was more than willing to be reasonable and
10 wait another couple of weeks. However, it had been almost two months since she was served
11 with plaintiff’s subpoena. County counsel’s response was that Ms. Daube will not be produced
12 “without a motion.” Attached hereto as Exhibit F is a true and correct copy of my
13 correspondence dated June 17 confirming such discussion.

14
15 9. County counsel then sent two letters both dated June 17, attached hereto as
16 Exhibits G and H, concluding that I had not met and conferred in good faith. Further, county
17 counsel maintained that plaintiff’s subpoena interfered with Ms. Daube’s work as a “solo-
18 practicing attorney.”

19
20 10. On June 26, I wrote county counsel noting that (a) the waiver issue applies to all
21 objections; (b) even if the objections were timely, they are boilerplate and frivolous; (c) no
22 privilege log has been produced; (d) Ms. Daube’s alleged status as a “solo-practicing attorney” is
23 nonsensical and irrelevant; (e) an extension has already been granted and ignored; and (f) it is Ms.
24 Daube or county counsel’s burden to support their objections, attached hereto as Exhibit I. At
25 this point, it was clear to me that county counsel was relying on his self-serving letters, avoiding
26 any rebuttal to the waiver issue, and would not justify any of his objections.

